APPENDIX A-1

J. 1684/81

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	:	
RICHARD N. KATZMAN, Appellant	:	No. 1232 Pittsburgh, 1980

Appeal from the Judgment of Sentence of the Court of Common Pleas, Allegheny County, Criminal Division, at No. CC7906289A.

BEFORE: CAVANAUGH, MONTEMURO and VAN DER VOORT, JJ

PER CURIAM: FILED: FEBRUARY 5, 1982

Judgment of sentence affirmed on the opinion by the Honorable Ralph J. Cappy, Court of Common Pleas, Allegheny County.

APPENDIX A-2

O P I N I O N

CAPPY, J.

This matter came before the Court for hearing and disposition of defendant Richard Katzman's post-verdict motions which were filed following a bench trial which resulted in his conviction on two counts of poolselling and bookmaking. There follows a statement of our reasons for denying the requested relief.

From the credible evidence, the following facts are apparent. On October 21, 1979, Pennsylvania State Police Officers were issued a search warrant to search the person of defendant Richard Katzman, on the basis of the affidavit of probable cause attached hereto. Later that day, five troopers took up surveillance at a point near 203 Roup

Street where the defendant had been repeatedly observed coming and going at odd hours since October 13, when police first initiated surveillance of defendant. At 4:40 PM as the defendant exited from the front door, carrying a newspaper under his arm, the troopers approached the defendant, identified themselves and announced that they had a search warrant. The defendant then darted away, and a chase ensued. While running, defendant dropped several papers contained in the newspaper he was carrying. As the defendant attempted to hurdle a fence about a block away, he fell into a yard below and was apprehended, dropping the newspaper and four sheets of listed sports bets which were confiscated by the troopers. At 4:45 PM the defendant was served with the search warrant and was placed under arrest for poolselling and bookmaking and was immediately advised

of his Miranda rights. In addition to the sheet listing sports bets and the newspaper, $545.00 in cash and a line sheet was confiscated.

The defendant first argues that the suppression court erred in denying his motion for suppression of all evidence seized from his person at or about the time of his arrest. The crux of defendant's contention is that, "there were no underlying facts or circumstances suggesting that any item of contraband or evidence would be found on the person of Katzman."[1] The defendant argues that nothing in the affidavit of probable cause underlying the search warrant for Katzman's

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1 See brief in support of Motion for New Trial and In Arrest of Judgment filed on behalf of Richard Katzman, defendant, at page 10.

person indicated that bets placed over the telephone were being recorded, that Katzman was never observed carrying rice paper, line sheets, or other bookmaking paraphernalia when entering or exiting 203 Roup Street, and that while the defendant was at one time the object of a search for bookmaking paraphernalia, said search failed to reveal the existence of rice paper, line sheets or any other bookmaking paraphernalia. Simply stated, defendant argues that the facts contained in the affidavit of probable cause could not sustain a conclusion "that a search of Katzman's person would yield anything whatsoever."[2] (Defendant's brief, page 12)

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2 It should be noted that the suppression court ruled that the search warrant and attached affidavit of probable cause for the premises located at 203 Roup

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The standard by which we are guided in examining the affidavit underlying a search warrant is well stated in Commonwealth v. Shaw, 444 Pa. 110, 281 A.2d 897 (1971):

> "In order for the issuance of a search warrant to be constitutionally valid, the issuing officer must reach the conclusion that probable cause exists at the time he issues the warrant." Commonwealth v. Nycz, ___ Pa.Super. ___, 418 A.2d 418 (1979); Furthermore, "the probable cause standard concerns only the possibilities, and not a prima facie showing of criminal activities, and probable cause

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2 (Cont'd)

Street lacked sufficiently detailed information to sustain a valid search of those premises, as 203 Roup Street is a multi-dwelling unit, and the affidavit failed to specify with sufficient particularity the area within the dwelling which was to be the object of search. As such, defendant's motion to suppress evidence seized as the result of the search of 203 Roup Street was granted.

exists when the facts and circumstances set forth in the affidavit are sufficient to warrant a person of reasonable caution to believe that the contraband to be seized is in the specific place described." Commonwealth v. Stamps, 260 Pa.Super. 108, 393 A.2d 1035 (1978); Commonwealth v. Passarelli, ___ Pa. Super. ___, 418 A.2d 485 (1980); Commonwealth v. Nycz, Supra.

It should also be emphasized that:

"Affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial. McCray v. Illinois, 386 U.S. 300, 311, 87 S.Ct. 1056 18 L.Ed.2d 62 (1967); Commonwealth v. Nycz, Supra. at 422; that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense, United States v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L. Ed.2d 684 (1965); (Nycz, Supra); and that their determination of probable cause should be paid great deference by reviewing courts. Jones v. United States,

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362 U.S. 257, 270-271, 80 S. Ct. 725, 4 L.Ed.2d 697 (1960). (Nycz, supra)

An examination of the affidavit of probable cause in the instant case reveals the following:

A. The affiant received information from a reliable confidential informant, (see attached affidavit) that he was placing football bets with one Richard Katzman at specified phone numbers beginning on September 8, 1979.

B. The informant stated that Katzman informed him that he was using call forwarding devices to thwart police efforts to find him.

C. The affiant was in the presence of the informant on September 8, 1979 when he dialed the specified phone number and placed a series of bets with a person he knew to be Richard Katzman.

D. The affiant contacted the informant on each weekend from September 8, 1979 until October 21, 1979 on which date the search warrant for Katzman's person was obtained.

E. The Bell Telephone Company was contacted with regard to the specified phone numbers obtained from the informant and it was verified that although

neither phone was registered in the name of the defendant, both numbers had call forwarding capabilities.

F. Surveillance was conducted at the residence of the individual to whom said phone numbers were actually registered, and during that surveillance the defendant was not found to be at that residence during any time when football or baseball bets were taken.

G. That beginning on October 13, 1979 the affiant maintained surveillance at the residence of Richard Katzman. On that day Katzman was observed leaving the residence in the 1979 Burgandy Lincoln bearing Pennsylvania registration number 01891X, registered to Foss Rentals in Murraysville, PA. The defendant was followed to the intersection of South Fairmont and Coral Avenues, where he parked his car and walked to 203 Roup Street, where he entered via the front door. On that occasion surveillance was maintained from approximately 11:00 AM until 1:00 PM. Katzman was not observed leaving the premises and further contact with the informant on that day revealed that bets had been placed by the informant with Katzman during the period of time he was observed at 203 Roup Street.

H. Surveillance was again maintained at 203 Roup Street on October 14, 1979. Again Katzman parked his car on South

Fairmont Street and walked to 203 Roup Street where he entered at approximately 11:17 AM.

I. On October 19, 1979 Katzman's car was again parked on South Fairmont. Surveillance was maintained between 5:30 PM and 8:00 PM after which Katzman left the building. Again on that date the informant revealed that he had received "line information" from Katzman over the telephone during the period of surveillance.

J. On October 20, 1979 Katzman was observed entering 203 Roup Street at 11:30 AM and when surveillance terminated at 2:00 PM Katzman still remained inside 203 Roup Street. On October 21, 1979 Katzman was observed parking his car in the 100 block of Roup Street at approximately 11:17 AM. Again he entered 203 Roup Street. The informant was contacted on this date and informed the affiant that he placed bets with Katzman over the specified phone number shortly after 12:00 Noon.

K. Katzman never parked his car directly in front of the residence at 203 Roup Street, although parking was always available in front of that location.

L. The affiant herein had personal knowledge that the defendant, over a period of approximately six years, was involved in bookmaking operations

both in the City of Pittsburgh and in the suburbs.

Based on the foregoing affidavit, there can be no doubt that the defendant, Richard Katzman, was involved in a cleverly devised bookmaking operation involving the use of telephone call-forwarding apparatus, that during the period involved herein, Katzman unquestionably received bets by telephone, that Katzman's principle residence was located at 220 South Negley Avenue, and that on those occasions when bets were placed with Katzman by the informant herein, Katzman was known to be at 203 Roup Street.

The final question to be determined herein is whether or not it was reasonable to infer that tangible evidence in the form of rice paper, line sheets or other bookmaking paraphernalia was employed by Katzman in furtherance of his bookmaking activities.

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Defense counsel argues that because such paraphernalia was never actually observed prior to Katzman's arrest, there is no reason to believe that any item of contraband would be found on Katzman's person. Common sense dictates but one conclusion; that in view of the surreptitious nature of Katzman's operations, combined with the frequent comings and goings of the defendant from the Roup Street location where he was unquestionably receiving bets by phone, the bookmaking paraphernalia was either located at the Roup Street residence or, if removed from that location, removed by the only individual ever seen entering and exiting those premises - Katzman himself. It would be stretching reality to the point of absurdity to assume that the bets themselves were not recorded but were neatly memorized and secreted in Katzman's mind. Yet, the

defense would have us reach this conclusion, even in view of the defendant's flight when confronted with a valid search warrant by police officers.

It is, therefore, this Court's conclusion that there was probable cause to issue search warrants of both the premises located at 203 Roup Street and of Katzman's person.[3]

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2 This Court has no doubt that Roup Street address was being used by Katzman to further his illicit bookmaking activities. However, as previously noted, the search warrant for Roup Street and the evidence seized therefrom was suppressed not because of insufficient probable cause to believe that said activity was being conducted at that location, but because of the line of cases requiring specificity when searching multi-dwelling units. Commonwealth v. Yucknevage, ___ Pa.Super. ___ 390 A.2d 225 (1978).

This conclusion is predicated on the premise that when a magistrate has found probable cause to issue a search warrant, the reviewing Court should not invalidate that warrant by interpreting the affidavit in a hyper-technical, rather than common sense manner. The affidavit must be read in a realistic fashion free of technical nitpicking. Commonwealth v. Nycz, Supra. Commonwealth v. Millard, ___ Pa.Super. ___, 417 A.2d 1171 (1979).

This Court must test and interpret the affidavit in a realistic light and the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded to the warrant. Nycz, Supra. Commonwealth v. Matthews, 446 Pa. 652, 85 A.2d 510 (1971); Commonwealth v. Forster, 253 Pa.Super. 433, 385 A.2d 416 (1978).

As stated in the Pennsylvania Superior Court in the closely analogous case of

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Commonwealth v. Nycz, Supra:

> "Bearing in mind that a determination of probable cause by the issuing authority is entitled to great deference by the reviewing court, and finally, that when we examine the affidavit we must understand that we deal only with probabilities that are not technical but are rather the factual and practical considerations of every day life on which reasonable and prudent men, not legal technicians act ... we find that the conduct of (the defendant) ... as observed by the affiant and included in the affidavit, was entirely consistent with that of one engaged in bookmaking ... We, therefore, find that the search warrant was based upon an affidavit which provided more than reasonable grounds to believe that the defendant was engaged in criminal activity and that a search of his person ... would uncover the trappings of his nefarious trade."[4]

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[4] Further, since the defendant fled in the face of a valid search warrant, any contraband which may have been dropped or abandoned in his flight was properly seized and therefore properly admitted at trial. Commonwealth v. Hall, 240 Pa.Super. 89, 367 A.2d 724 (1979).

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Defendant finally contends that the verdict is against the weight of the credible evidence and is contrary to the applicable law. The evidence in this case raised a question of credibility which the court, in accepting the testimony of the state troopers, resolved in favor of the prosecution.[5] Further, the evidence, viewed in the light most favorable to the Commonwealth and accepting as true all evidence and reasonable inferences therefrom, was unquestionably sufficient to convict the defendant of the crimes with which he was charged. Davis, Supra.

We find the verdict to be fully supported by the evidence, and in the absence

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5 Credibility determinations are the sole province of the fact finder, Commonwealth v. Davis, ___ Pa. ___, 421 A.2d 179 (1980).

of meritorious reasons to the contrary must conclude that the motions for a new trial and in arrest of judgment were properly denied.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
vs.	)	No: CC7906289A
	)	
RICHARD KATZMAN	)	

ORDER OF COURT

AND NOW, to-wit, this 7th day of January, 1981, after hearing in open court and careful consideration thereof, it is hereby

ORDERED ADJUDGED and DECREED that the post-verdict motions which were filed by the defendant are hereby denied.

BY THE COURT:

/s/ Cappy, J.

/s/ Joseph H. Ridge

APPENDIX B-1

U.S.C.A. Const. Amend. 4

AMENDMENT IV - SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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U.S.C.A. Const. Amend. 14

CONSTITUTION

AMENDMENT XIV.-CITIZENSHIP; PRIVILEGES AND IMMUNITIES: DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according

to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of

President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as of officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any

debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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IN THE
SUPREME COURT OF PENNSYLVANIA

Western District

No: 59 W.D. ALLOCATUR DOCKET 1982

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

vs.

RICHARD KATZMAN,

Petitioner.

PETITION FOR ALLOWANCE OF APPEAL
FROM ORDER OF THE SUPERIOR COURT
AT NO. 1232 PITTSBURGH 1980

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"Petition for Allowance of
Appeal Denied Per Curiam
5/18/82"

Entered 5/28/82